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Supreme Court, U.S.
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In the
Supreme Court of the United States

OCTOBER TERM, 1990

No. 90-1470

COLEGIO DE ABOGADOS DE PUERTO RICO,

PETITIONER

v.

ROBERT E. SCHNEIDER; HECTOR RAMOS; ORESTE V. RAMOS; JORGE F. ROMANY, AND JORGE SOUSS

RESPONDENTS AND CROSS PETITIONERS.

CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

CROSS PETITION FOR WRIT OF CERTIORARI

ROBERT E. SCHNEIDER
HECTOR L. MARQUEZ
ORESTE V. RAMOS *
Suite 502
1606 Ponce de Leon Ave.
Santurce, P. R. 00909
(809) 722 3670
Attorneys for Cross-Petitioners
* Counsel of Record

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Publishing Resources, Inc., San Juan, Puerto Rico

QUESTIONS PRESENTED FOR REVIEW

1. IS THE EXPRESSED INTEREST OF THE STATE IN THE SOCIAL ADVANCEMENT OF THE COMMUNITY AND THE PROMOTION OF A PLURALISTIC SOCIETY JUSTIFICATION FOR A STATE LAW THAT TOTALLY DEPRIVES LAWYERS OF THE RIGHT TO FREEDOM OF ASSOCIATION AND SPEECH BY COMPELLING THEM, AS A CONDITION TO THE RIGHT TO PRACTICE LAW, TO BELONG AND GIVE MANDATORY FINANCIAL SUPPORT, BY THE PAYMENT OF ANNUAL DUES AND THE PURCHASE OF STAMPS, TO THE COLEGIO DE ABOGADOS DE PUERTO RICO, A QUASI PUBLIC STATE BAR CREATED BY STATE LAW WITH A PENCHANT FOR AND EXHORTED AND ENCOURAGED BY THE STATE TO ENGAGE IN IDEOLOGICAL CONTENTION AND LIMITS THEIR RIGHT TO DISSENT TO A REBATE OF THEIR COMPELLED FUNDING FOR SUCH IDEOLOGICAL ACTIVITIES.

2. IS THE NOMINAL AWARD OF $1.00 TOO LOW A PRICE TO COMPENSATE FOR THE IRREPARABLE INJURY SUFFERED BY LAWYERS, EVEN WITHOUT EVIDENCE OF AN EXACT AMOUNT THEREOF, FOR THE ABRIDGMENT OF THEIR FIRST AMENDMENT FREEDOMS OVER AN EXTENDED PERIOD OF TIME.

3. DO CROSS-PETITIONERS HAVE STANDING TO CHALLENGE THE UNLIMITED, IN TIME AND AMOUNT, AND UNBUDGETED EXPENDITURE OF PUBLIC FUNDS UNDER LAW NO. 115 OF MAY 6, 1941 (TITLE 4, *LAWS OF PUERTO RICO ANNOTATED*, SECTION 785) FOR THE BENEFIT OF THE COLEGIO DE ABOGADOS DE PUERTO RICO TO HELP FINANCE ITS PERVASIVE IDEOLOGICAL ACTIVISM.

PARTIES TO THE PROCEEDINGS

Cross Petitioners and Respondents, who were appellees below, are Robert E. Schneider, "Schneider," Hector Ramos, "Ramos," Oreste V. Ramos, "Oreste," Jorge R. Romany, "Romany" and Jorge Souss, "Souss."

Cross Respondents, who were appellants below, are Colegio de Abogados de Puerto Rico, the "Colegio," Petitioner in Case No. 90-1470; the Secretaries of Justice and of the Treasury of the Commonwealth of Puerto Rico, the "Secretaries," Petitioners in Case No. 90-1513 and the Justices of the Supreme Court of Puerto Rico, the "Justices," nominal parties in their rule-making capacity.

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1. The expressed interest of the state in the social advancement of the community and the promotion of a pluralistic society is not justification for a state law that deprives lawyers of the right to freedom of association and speech by compelling them, as a condition to the right to practice law, to belong and give mandatory financial support, by the payment of annual dues and the purchase of stamps, to the Colegio de Abogados de Puerto Rico, a quasi public state bar created by state law with a penchant for and exhorted and encouraged by the state to engage in ideological contention. . . . 8

2. The nominal award of $1.00 is too low a price to compensate for the irreparable injury suffered by lawyers, even without evidence of an exact amount thereof, for the abridgment of their First Amendment freedoms over an extended period of time. 12

3. Cross-petitioners have standing to challenge the unlimited, in time and amount, and unbudgeted expenditure of public funds under Law No. 115 of May 6, 1941 (Title 4, *Laws of Puerto Rico Annotated*, Section 785) for the benefit of the Colegio de Abogados de Puerto Rico to help finance its pervasive ideological activism. 12

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ROBERT E. SCHNEIDER; HECTOR RAMOS; ORESTE V. RAMOS; JORGE F. ROMANY, AND JORGE SOUSS

RESPONDENTS AND CROSS PETITIONERS.

CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

CROSS PETITION FOR WRIT OF CERTIORARI

Cross-Petitioners, Robert E. Schneider, Hector Ramos, Oreste V. Ramos, Jorge F. Romany and Jorge Souss, hereby respectfully petition that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the First Circuit entered on October 24, 1990 in Cases Nos. 88-1937, 88-1938 and 88-1939 and reported at 917 F.2d 620.

Opinions Below

The final opinion of the Court of Appeals for the First Circuit, the "Court of Appeals," was entered on October 24, 1990, is reported at 917 F.2d 620 and appears reprinted at pages 1 to 36 of Appendix A to the Petition for Writ of Certiorari in Case No. 90-1470 filed by the Colegio.

Jurisdiction

The opinion of the Court of Appeals was entered on October 24, 1990.

The Colegio, Cross-Respondent and Petitioner in Case No. 90-1470, filed a Petition for a Writ of Certiorari on March 20, 1991, a copy of which was received by Cross-Petitioners and Respondents on March 26, 1991.

This Court has jurisdiction to review the judgment or decision of the Court of Appeals for the First Circuit under 28 U.S. Code, Section 1254 (1).

This Cross-Petition is authorized under the provisions of Rules 12 and 13 of the Rules of this Court.

Constitutional and Statutory Provisions Involved

The First Amendment of the Constitution of the United States provides that:

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for redress of grievances.

Law No. 43 of May 14, 1932, as amended (Title 4, *Laws of Puerto Rico Annotated*, Section 771 et seq.), hereinafter referred to as "Law 43," which creates the Colegio and compels all lawyers, including judges, to be members of, pay dues to and purchase stamps from the Colegio. Reprinted, in part, at page A304 of the Appendix to the Petition for Writ of Certiorari in Case No. 90-1470 filed by the Colegio.

Law No. 99 of June 27, 1956, as amended (Title 4, *Laws of Puerto Rico Annotated*, Section 1006), that compels notaries to buy notarial stamps issued by the Colegio and affix them to notarial instruments, reprinted at page A305 of the Appendix to the Petition for Writ of Certiorari in Case No. 90-1470 filed by the Colegio.

Law No. 115 of May 6, 1941 (Title 4, *Laws of Puerto Rico Annotated*, Section 785) that directs the Secretary of the Treasury of Puerto Rico to sell forensic and notarial stamps of the Colegio through the offices of the State collectors of internal revenue and to reimburse

the Colegio "monthly, the total amount of the sales made, without making any deductions from the selling price."

Statement of the Case

This controversy commenced on June 9, 1982 when Ramos and Schneider, two of the respondents herein, filed a civil rights action in the U.S. District Court for the District of Puerto Rico, the "District Court," under the provisions of Section 1983 of Title 42 of the U.S. Code for declaratory and injunctive relief and damages against the Colegio; the Secretaries, and the Justices challenging, on federal constitutional grounds, the system imposed by the laws of Puerto Rico that compelled all lawyers, once admitted to practice: to belong and pay dues to the Colegio as a condition to their right to continue to practice law; to purchase and cancel notarial and forensic stamps issued by the Colegio, and that compelled the Department of the Treasury of the Commonwealth (the "Treasury") to use public facilities to sell such Colegio stamps without charge to the Colegio nor recovery by the Treasury of the cost of selling such Colegio stamps. Similar actions were filed in the same court against the same parties on June 20, 1982, by respondents Romany and Souss, and on June 22, 1982 by respondent Oreste. Subsequently, the District Court ordered that all of these actions be consolidated (the "Consolidated Actions").

Prior to the filing of the Consolidated Actions, in November of 1977, the Colegio filed an action for disbarment (the "1977 Disbarment Action"), in the Supreme Court of Puerto Rico (the "State Court"), against 99 lawyers, for their failure to pay arrears in compulsory dues to the Colegio. Respondents Ramos, Romany and Schneider were included as respondents in the 1977 Disbarment Action. Romany paid his arrears in compulsory dues in 1978 and thereafter was eliminated as a respondent in the 1977 Disbarment Action. Respondents Souss and Oreste were never included as respondents in the 1977 Disbarment Action.

In February of 1978, Ramos and Schneider filed allegations in the 1977 Disbarment Action, challenging, under the laws and Constitution of Puerto Rico, the validity of Law 43 that compelled all lawyers admitted to practice, including acting judges in the local

courts and in the Federal district court in Puerto Rico, to belong to the Colegio, pay annual dues and purchase Colegio forensic stamps and of Law 99 that compelled all lawyers to purchase Colegio notarial stamps and challenging the use by the Colegio for ideological and political activities that they opposed of money they were compelled to pay to the Colegio as dues and to buy Colegio stamps. Finally, on April 5, 1982, more than five years after they first challenged the state imposed compulsory bar membership and funding system in the 1977 Disbarment Action, after many incidents involving State Court orders and countermanding orders and their many frustrated attempts at discovery, the State Court finally issued its Opinion and Judgment, the "1982 State Court Decision," reported at 112 D.P.R. 540 (1982) (CA p.221-242), holding the Colegio compulsory membership and funding system to be valid and constitutional under the laws and Constitution of Puerto Rico and ordering all respondents in the 1977 Disbarment Action (including Ramos and Schneider but none of the other Respondents in this action) to pay their arrears in dues or be disbarred. By Motion of May 7, 1982 the Colegio certified to the State Court the names of the 17 respondents in the 1977 Disbarment Action (including Ramos and Schneider) who were still in arrears in the payment of Colegio compulsory dues and asked the State Court to proceed in accordance with the 1982 State Court Decision against the 17 lawyers named in said motion. By Order of June 3, 1982 the State Court disbarred only two of the 17, respondents Ramos and Schneider, for failing to pay their arrears in Colegio compulsory dues as required by the 1982 State Court Decision; three of the 17 paid and were eliminated as respondents, but, despite the terms of the 1982 State Court Decision which required all respondents in the 1977 Disbarment Action to pay their arrears in Colegio compulsory dues (Page 235, Colegio Appendix in Case No. 90-1470, hereinafter referred to as CA p.235) no action was taken against the remaining twelve respondents in the 1977 Disbarment Action whom the Colegio had certified to the State Court in its May 7, 1982 motion as still in arrears in the payment of Colegio compulsory dues.

The 1982 State Court Decision held the Colegio had the right and, indeed, the obligation to engage in political and ideological activity "for the social advancement of the community," (CA p.226) although the Justices of the State Court disagreed as to the justification: Chief

Justice Trias Monge held that an ideologically active Colegio fulfilled a very special mission in converting Puerto Rico's traditionally monolithic milieu to a pluralistic society (CA p.226) while Justice Negron Garcia (who later disqualified himself from acting in the case because he was the brother of Arturo Negron Garcia, a Past President of the Colegio, a member of the Colegio's Council of Presidents, and one of the lawyers representing the Colegio in the 1977 Disbarment Action) held, in a concurring opinion, that the elimination of the compulsory Colegio for its past or present errors was not justified in a "pluralistic society" such as existed in Puerto Rico. (CA p.238) The 1982 State Court Decision did, however, recognize a limited right of lawyers, not retroactive to 1978 when the challenge was filed but prospective only from the date of the 1982 State Court Decision, to object to the use of compulsory dues paid by them to the Colegio for ideological activities they opposed and that were unrelated to the statutory Colegio purposes. To achieve this, the Colegio was directed to adopt, before the next Colegio dues due date, a method for lawyers to seek partial refunds of future compulsory dues' payments used by the Colegio for ideological activity opposed by such lawyers, following the guidelines set forth in the 1982 State Court Decision and "heeding the principles laid down in *Street, Allen and Abood*," although these "make no definitive pronouncement on this prickly problem." (CA p.234)

The 1982 State Court Decision mentioned the use of proceeds from compulsory purchases of Colegio stamps but made no specific finding nor conclusion concerning such stamps or the use of such proceeds nor of the use of public facilities and funds under Law 115 to sell Colegio stamps without reimbursement of government expenses incurred even though these issues were all properly raised, argued and briefed in the State Court by respondents Ramos and Schneider.

The Consolidated Actions challenged as unconstitutional Laws No. 43 and 99 which compelled all lawyers admitted to practice law by the State Court to be members of the Colegio and, as a condition to their continued right to practice, compelled them to pay mandatory dues and purchase Colegio stamps, and Law No. 115 which directed the Treasury to use public facilities to sell Colegio stamps without cost to the Colegio. The Schneider-Ramos complaint alleged, in

addition, that the proceedings leading to their suspension were unconstitutional and discriminatory in that they were denied a full, fair, impartial and meaningful hearing and that defendants had acted individually and/or collectively in the actions alleged in the complaint.

The Justices filed several motions to dismiss and/or for summary judgment which were joined by the Colegio and the Secretaries and on September 13, 1982, the District Court entered an Order, the "1982 Order," reported at 546 F. Supp. 1251 (CA p.82-124) dismissing "the conspiracy allegations against the Justices and Colegio"; "the claim from damages against the Justices and the claim for damages against the Colegio, as applied only to the latter's prosecutorial activities" in the proceedings before the State Court in the 1977 Disbarment Action and for its use of funds prior to the 1982 State Court Decision, and "all allegations or claims seeking in any way to modify, alter, challenge or otherwise affect the outcome of the suspension for non-payment of past dues of plaintiffs Schneider and Ramos" under the 1982 State Court Decision. Prior to the 1982 Order, the Justices filed a petition for a writ of mandamus with the Court of Appeals which was joined by the Colegio and on December 8, 1982 the Court of Appeals entered its decision, hereinafter the "1982 Mandamus Decision," reported at 695 F.2d 17 (CA p.39-57) denying the petition of the Colegio and the Fundacion Colegio de Abogados, and with regard to the petition of the Justices, ordering the dismissal of "claims against the Justices insofar as they involve Puerto Rico's system of compulsory bar membership and compulsory payment of bar dues" but denying the petition as to the stamp claims, holding with respect to these that the Justices were to remain as purely nominal parties because they were sued in their administrative and not in their adjudicative capacity.

The remaining issues were tried to the District Court and, based on the evidence submitted and the briefs of the parties, on June 16, 1983, the District Court entered its Opinion and Order and Judgment, the "1983 Judgment," reported at 565 F. Supp. 963 (CA p.125-163) declaring unconstitutional, as interpreted, enforced and applied, those provisions of Puerto Rico laws imposing mandatory membership in the Colegio, mandatory payment of dues to the Colegio and mandatory purchase of Colegio stamps; requiring the Treasury to sell

Colegio stamps through the offices of collectors of internal revenues and remit the proceeds from such sales to the Colegio without any deductions, and enjoining their enforcement until such time as the Colegio ceased engaging in ideological and/or political activism.

The Colegio filed an appeal from the 1983 Judgment with the Court of Appeals, on August 23, 1984 entered its decision, the "1984 Appeal," reported at 742 F.2d 32 (CA p.58-81) vacating the 1983 Judgment and remanding the case, ordering the District Court to stay its hand "while retaining jurisdiction, to allow the State Court a reasonable time within which to review the Colegio's remedy, and to accept, reject of modify it... before proceeding to the merits of the matters before it." and to proceed after the State Court "finally determined what remedy to provide..." for dissenting Colegio members, "or sooner in the unlikely event of some unusual delay." No appeal of the 1983 Judgment was taken by the Secretaries or by the Justices.

After the 1984 Appeal vacating the 1983 Judgment, the State Court, at the request of the Colegio, held extensive hearings before a special master to hear Colegio testimony. After these hearings, on June 26, 1986, the State Court issued its decision, hereinafter the "1986 Rule," reported at 117 D.P.R. 504 (1986) (CA p.243-300) setting forth a new and revised rebate remedy for lawyers who dissented with Colegio activities.

After the 1986 Rule the District Court set the case for trial and after trial, the Colegio filed a motion to dismiss which was denied by the District Court by Opinion and Order entered on August 21, 1987, the "1987 Order," reported at 670 F.2d 1098 (CA p.164-179) and on March 3, 1988 the District Court entered its opinion and judgment, the "1988 Judgment," reported at 682 F. Supp. 674 (1988) (CA p.180-220) declaring unconstitutional the provisions of Puerto Rico laws imposing mandatory Colegio membership, mandatory payment of Colegio dues and mandatory purchase of Colegio stamps.

The Colegio and the Secretaries then filed an appeal of the 1988 Judgment with the Court of Appeals and respondents, Ramos and Schneider cross-appealed. On October 24, 1990 the Court of Appeals entered its decision on the appeal and cross appeal, the "1990 Appeal," reported at 917 F.2d 620 (CA p.1-36) holding: that the 1986 Rule was the product of rule making and not of judicial

decision-making so the District Court had jurisdiction to review its merits; that the Colegio could use mandatory dues and stamp fees only for expenditures "necessarily or reasonably incurred for the purpose of regulating the legal profession or 'improving the quality of legal service available to the people' and to fund the insurance program, social activities and others incidental to the operation of the Colegio; that activities that could funded with compulsory dues were those revolving "around the role of the lawyer as lawyer, rather than relying on the lawyer's more generic role as an informed and perhaps influential member of a complex society."; that no part of otherwise fundable activities could financed with compulsory funds if intertwined beyond separation with ideological activities; that the 1986 Rule did not meet constitutional standards because there was no support for the 15% escrow amount and on its face any rebate required objections to specific activities; that the Colegio could collect stamp fees so long as they were segregated from other funds and used only for core activities, and that plaintiff-appellees, respondents herein, could not challenge the use of government facilities to sell Colegio stamps. The 1990 Appeal also affirmed the award of $1.00 in nominal damages to each plaintiff and granted the Colegio a term of 6 months to submit a modified version of the 1986 Rule correcting the defects noted in the 1990 Appeal before enforcement of the 1988 Judgment.

The Colegio and the Secretaries both filed petitions with the Court of Appeals for Rehearing with suggestion for rehearing *en banc* which were denied by Order of the Court of Appeals entered on December 20, 1990 (CA p.37)

The Colegio filed a Petition for Writ of Certiorari with this Court under No. 90-1470 and the Secretaries filed a similar Petition under No. 90-1513.

REASONS FOR GRANTING THE WRIT

1. THE EXPRESSED INTEREST OF THE STATE IN THE SOCIAL ADVANCEMENT OF THE COMMUNITY AND THE PROMOTION OF A PLURALISTIC SOCIETY IS NOT JUSTIFICATION FOR A STATE LAW THAT DEPRIVES LAWYERS OF THE RIGHT TO FREEDOM OF

ASSOCIATION AND SPEECH BY COMPELLING THEM, AS A CONDITION TO THE RIGHT TO PRACTICE LAW, TO BELONG AND GIVE MANDATORY FINANCIAL SUPPORT, BY THE PAYMENT OF ANNUAL DUES AND THE PURCHASE OF STAMPS, TO THE COLEGIO DE ABOGADOS DE PUERTO RICO, A QUASI PUBLIC STATE BAR CREATED BY STATE LAW WITH A PENCHANT FOR AND EXHORTED AND ENCOURAGED BY THE STATE TO ENGAGE IN IDEOLOGICAL CONTENTION.

The Court of Appeals in the 1990 Appeal started with the proposition that the Commonwealth constitutionally could condition the right to practice law upon membership in the Colegio because this Court in *Keller v. State Bar of California*, 495 U.S. ___, 110 S.Ct. 2228 (1990) had reaffirmed its earlier conclusion in *Lathrop v. Donahue*, 367 U.S. 820 (1961) that compelled membership in and the payment of compulsory dues to an integrated state bar, did not per se violate an individual's First Amendment rights. (CA p.4)

However, this Court, in *Keller, supra*, at p.2233 noted that in *Lathrop, supra* the plurality opinion emphasized that it was confronted, as in *Railway Employees v. Hanson*, 351 U.S. 225 (1956), "only with a question of compelled financial support of group activities, not with involuntary membership in any other aspect." In *Keller, supra* at p. 2238 this Court recognized that the petitioners in their complaint in the State Court requested relief that implicated a much broader freedom of association claim than was at issue in *Lathrop*. This Court, in *Keller*, declined to address the petitioners' challenge to compelled membership in an organization that engaged in political or ideological activities beyond those for which mandatory financial support was justified under the principles of *Lathrop, supra* and *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977).

The First Amendment rights of lawyers are abridged not only by the imposition of compulsory dues but also by the imposition of compelled membership in an integrated state bar. In *Lathrop, supra*, and later in *Keller, supra*, this Court, applying the principles enunciated in the free-rider union cases (which in every case referred

only to employees who were not union members and were not compelled to be union members) determined that, on the record in *Lathrop* and *Keller*, the abridgment of the First Amendment rights of lawyers by the imposition of compulsory dues to fund non ideological state bar activities was justified because of the legitimate state interest in such activities. The question of involuntary membership was never decided in *Lathrop*, nor in *Keller*, nor in any of the free-riders cases. It is clearly wrong to state that the imposition of compulsory membership in an organization that engages in political or ideological activities beyond those for which mandatory financial support is justified under the principles of *Lathrop*, and *Abood*, *supra*, does not per se violate an individual's First Amendment rights. The imposition of compulsory membership is the total deprivation of the First Amendment right of freedom of association for an unlimited period of time and unquestionably constitutes irreparable injury.

The state courts in states that require compulsory membership in an integrated bar as condition to the right to practice law have generally held that there is sufficient state justification for the abridgment of First Amendment rights that compulsory membership entails but none has ever examined the existence of less drastic means to achieve the purposes adduced as justification for compulsory membership and it is clear that the purposes adduced as justification for the imposition of compulsory membership can be and are achieved in other states without the imposition of compulsory membership and without the abridgment of First Amendment rights.

It is time for this Court to rule on the constitutionality of the imposition of compulsory membership in an integrated bar as a condition to the right to practice law and such a ruling is even more important in this case where the state justifies the imposition of compulsory membership in the Colegio in order to permit and encourage the Colegio's pervasive and continuing ideological activism.

As the question of compulsory membership has never been presented nor decided, this Court has only had to deal with the incidental use of compelled contributions by the employee or lawyer for ideological and/or political purposes with which he or she disagrees and has ruled that for this abridgment of First Amendment rights a rebate of the compelled contributions of the dissenting

employee or lawyer used incidentally for such ideological and/or political purpose is sufficient.

In this case, however, we have on the one hand a Colegio that engages in pervasive and continuing ideological activism; that is exhorted and encouraged by the State to engage in ideological activism: that imposes compulsory membership in the Colegio and the compulsory purchase of Colegio stamps, and, on the other hand, a remedy that offers, as compensation for the irreparable injury resulting from the loss of First Amendment rights, the rebate of the compelled contribution actually used for such ideological activity, placing the burden on the dissenting lawyer to give notice of dissent, even though the notice need not specify the objected activity.

The rebate remedy is adequate in the union free-rider context where compulsory membership is not imposed on the employee. In those cases dissent can be manifested by declining to become a member of the union and without forcing the dissenter to continue as a member of the organization with which he dissents. But in the case at hand, where the lawyer is compelled to be a member of the Colegio, an organization that engages in and is exhorted and encouraged by the State to engage in pervasive and continuing ideological activism, the rebate remedy only multiplies the First Amendment loss, the dissenter must give notice of his dissent thus disclaiming accord with the beliefs of the Colegio and setting himself apart from the consenting members of the organization to which he is compelled to belong, creating in effect an organization divided into two opposing camps, one composed of those who consent to the ideological activism of the Colegio and the other of those who do not, forced against their will to continue as one body. As suggested by Tribe (See, Laurence H. Tribe, *American Constitutional Law*, Mineola, New York - Foundation Press 1978, Chapters 12, Sect. 12-4, p. 589 and 15, Sect. 15-1, p. 888), "a better solution" would be to require that all ideological activity be financed from voluntary contributions but even this solution would be inadequate here given the Colegio's penchant for continuous and continuing ideological activism; the only adequate solution would be a voluntary Colegio with full power and unafraid to use the voice granted it by the very pluralistic purpose that the State has decreed that it should serve in the name of all of its voluntary members.

2. THE NOMINAL AWARD OF $1.00 IS TOO LOW A PRICE TO COMPENSATE FOR THE IRREPARABLE INJURY SUFFERED BY LAWYERS, EVEN WITHOUT EVIDENCE OF AN EXACT AMOUNT THEREOF, FOR THE ABRIDGMENT OF THEIR FIRST AMENDMENT FREEDOMS OVER AN EXTENDED PERIOD OF TIME.

In *Elrod v. Burns*, 427 U.S. 347 (1976), this Court said "the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." For an extended period, Ramos, Oreste, Romany, Souss and Schneider have been deprived of their First Amendment right of freedom of association by laws that compel them to be members of and pay dues to the Colegio and buy Colegio stamps as a condition to their right to continue to practice law. More than 8 years have passed since they first filed their claims in the federal court for the loss of their First Amendment freedoms because of those very same laws.

For the irreparable injury suffered by Ramos, Oreste, Romany, Souss and Schneider, the District Court awarded each of them the nominal sum of $1.00 in the 1988 Judgment and the Court of Appeals affirmed this award in the 1990 Appeal. There was ample evidence of harm and injury to them from the loss of the their First Amendment rights even though there was no evidence of the amount of the injury. The award of the nominal sum of $1.00 is plainly inadequate to compensate for the irreparable injury suffered because of the loss of their First Amendment right of freedom to associate.

3. CROSS-PETITIONERS HAVE STANDING TO CHALLENGE THE UNLIMITED, IN TIME AND AMOUNT, AND UNBUDGETED EXPENDITURE OF PUBLIC FUNDS UNDER LAW NO. 115 OF MAY 6, 1941 (TITLE 4, *LAWS OF PUERTO RICO ANNOTATED*, SECTION 785) FOR THE BENEFIT OF THE COLEGIO DE ABOGADOS DE PUERTO RICO TO HELP FINANCE ITS PERVASIVE IDEOLOGICAL ACTIVISM.

Cross-Petitioners in this case have challenged a state spending program, the exercise by the state, under Law 115, of the power to spend an unlimited amount of public funds over an unlimited period

of time to finance the ideological and/or political activism of the Colegio in violation of their First Amendment rights. Their personal stake in the outcome of the controversy is sufficient to assure that concrete adverseness which sharpens the presentation of the issue involved. They are directly affected by the ideological and/or political activity of the Colegio which it claims to speak for them and for all of its members on matters to which Cross-Respondents are opposed and they have a personal stake in preventing the state from using public funds to collect, for the benefit of the Colegio, funds to finance its ideological and/or political activity.

Law 115 directs that public revenues be expended by the state so that it may act as custodian of and sell Colegio stamps, expenditures totally unrelated and not incidental to the regulation and administration of the Colegio but directly and materially pertinent only to the purposes of Law 115, expenditures that are substantial because they are not limited in amount or in duration even though in any one year they may not be substantial, expenditures which are not separately budgeted and which are hidden from the eyes of the average taxpayer.

In their April 29, 1983 Memorandum of Law in the State Court, the Secretaries conceded that the expenditure of public revenues to sell Colegio stamps would constitute a freedom of speech violation if the proceeds from such sales were used by the Colegio for ideological purposes. The District Court has found that the Colegio did and continues to engage in "ideological and/or political activism of a pervasive and continuous nature" and that this ideological and/or political activism was funded from mandatory Colegio dues and the mandatory purchase of Colegio stamps. This was sufficient basis for Cross-Petitioners' taxpayer claim.

CONCLUSION

"Lawyers are not relegated to a watered-down version of constitutional rights. There are rights of constitutional stature whose exercise a state may not condition by the exaction of a price..." *Garrity v. New Jersey*, 385 U.S. 493, at 500 (1967). Among the rights so protected are the right of individuals to associate to further their personal beliefs (*Healy v. James*, 408 U.S. 169 at 181 (1972).

Review by this Court is necessary to resolve the important question of law left unanswered nearly three decades ago in *Lathrop*, the constitutionality of state law imposing compelled membership in an state bar, and especially in a state bar that engages in pervasive and continuous ideological activism. For the reasons stated it is respectfully urged that this Court grant this petition for Writ of Certiorari and that the 1990 Appeal be reversed as to the issues here raised.

DATED: April 24, 1991

Respectfully submitted,

ROBERT E. SCHNEIDER, JR.
HECTOR L. MARQUEZ
ORESTE V. RAMOS *
* *Counsel of Record*
Suite 502
1606 Ponce de Leon Ave.
Santurce, P.R. 00909
(809) 722 3670
Attorneys for Cross-Petitioners

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90-1513 (4)

No. ~~90-1470~~

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1990

COLEGIO DE ABOGADOS DE PUERTO RICO,
PETITIONER,

v.

ROBERT E. SCHNEIDER; HECTOR RAMOS; ORESTE V. RAMOS; JORGE F. ROMANY; AND JORGE SOUSS,
RESPONDENTS, CROSS-PETITIONERS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

OPPOSITION TO CROSS-PETITION FOR WRIT OF CERTIORARI

CARLOS V. GARCIA GUTIERREZ
LUIS M. VILLARONGA
CARLOS A. RODRIGUEZ VIDAL
HARRY ANDUZE MONTANO
Counsel of Record
117 Eleanor Roosevelt Ave.
Suite 303
Hato Rey, Puerto Rico 00918
(809) 250-7171
Attorneys for Petitioners, Cross-Respondents

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QUESTIONS PRESENTED

1. Whether, as the record has been developed below, the Commonwealth of Puerto Rico can constitutionally condition the right to practice law in Puerto Rico upon compelled membership in, and the payment of compulsory dues to, the Colegio de Abogados de Puerto Rico without *per se* violating an individual attorney's First Amendment rights.

2. Whether, assuming any award of damages was warranted in favor of plaintiffs' in this case, the nominal award of $1.00 does not constitute an abuse of discretion on the part of the District Court, where plaintiffs submitted no evidence of the nature and extent of the harm they have allegedly suffered, and cited no precedent imposing on the Court the obligation to speculate on the extent of their injury.

3. Whether, plaintiffs lack taxpayer standing to challenge the Commonwealth of Puerto Rico's internal revenue offices to sell notarial and forensic stamps issued by the Colegio de Abogados de Puerto Rico, where they failed to show that such activity involves "a measurable appropriation" or loss of revenue, or "a direct dollars-and-cents injury" to themselves.

PARTIES TO THE PROCEEDINGS

Petitioners and cross-respondent, who were appellants below, are Colegio de Abogados de Puerto Rico, petitioner in Case No. 90-1470; the Secretaries of Justice and of the Treasury of the Commonwealth of Puerto Rico, petitioners in Case No. 90-1513, and the Justices of the Supreme Court of Puerto Rico, nominal parties in their rule-making capacity.

Respondents and cross-petitioners, who were appellees below, are Robert E. Schneider, Hector Ramos, Oreste V. Ramos, Jorge F. Romany, and Jorge Souss.

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In the
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OCTOBER TERM, 1990

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COLEGIO DE ABOGADOS DE PUERTO RICO,
PETITIONER,

v.

ROBERT E. SCHNEIDER; HECTOR RAMOS;
ORESTE V. RAMOS; JORGE F. ROMANY;
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RESPONDENTS, CROSS-PETITIONERS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

OPPOSITION TO CROSS-PETITION FOR WRIT OF CERTIORARI

Petitioner and cross-respondent Colegio de Abogados de Puerto Rico, hereby respectfully opposes a cross-petition that a writ of certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the First Circuit entered on October 24, 1990 in Cases Nos. 88-1937, 88-1938, and 88-1939, reported at 917 F.2d 620.

Opinions Below

The final opinion of the United States Court of Appeals for the First Circuit was entered on October 24, 1990, is reported at 917 F.2d 620 and appears reprinted at pages 1 to 36 of the Appendix to the Petition for the Writ of Certiorari in Case No. 90-1470 filed by the Colegio de Abogados de Puerto Rico.

Jurisdiction

Invoking federal jurisdiction under 42 U.S.C. §1983, the respondents and cross-petitioners brought this suit in the United States District Court for the District of Puerto Rico. On March 3, 1988, the District Court entered its opinion and judgment, reported at 682 F. Supp. 674 (D.P.R. 1988), declaring unconstitutional provisions of Puerto Rico laws imposing mandatory membership in the Colegio de Abogados de Puerto Rico, mandatory payment of dues to the Colegio de Abogados de Puerto Rico and mandatory purchase of stamps issued by the Colegio de Abogados de Puerto Rico.

On petitioner's and cross-respondents' appeals, the First Circuit entered a judgment on October 24, 1990 that affirmed in part, reversed in part, and modified and remanded the case for further proceedings consistent with its opinion. Upon a timely petition for rehearing with the suggestion that the case be reheard *en banc*, the First Circuit denied the petition for rehearing on December 20, 1990.

This Court has jurisdiction to review the judgment or decision of the Court of Appeals for the First Circuit under 28 U.S.C. §1254(1).

This Opposition to Cross-Petition for Writ of Certiorari is authorized under the provisions of Rules 12 and 13 of the Rules of this Court.

Constitutional and Statutory Provisions Involved

Petitioner and cross-respondent Colegio de Abogados de Puerto Rico respectfully refer the Court to its statement of Constitutional and Statutory Provisions Involved contained in its Petition for Writ of Certiorari dated March 26, 1991.

Statement of the Case

Petitioner and cross-respondent Colegio de Abogados de Puerto Rico respectfully refer the Court to its Statement of the Case contained in its Petition for Writ of Certiorari dated March 26, 1991.

Reasons for Denying the Writ

I. As the Record Has Been Developed Below, the Commonwealth of Puerto Rico Can Constitutionally Condition the Right to Practice Law in Puerto Rico Upon Compelled Membership in, and the Payment of Compulsory Dues to, the Colegio de Abogados de Puerto Rico Without Per Se Violating an Individual Attorney's First Amendment Rights.

The Court below fully considered and correctly decided the issue attempted to be presented now by the cross-petitioner. This Court in *Keller* v. *State Bar of California*, 495 U.S. __, 110 L.Ed.2d 1, 110 S.Ct. 2228 (1990), reaffirmed its earlier decision in *Lathrop* v. *Donahue*, 367 U.S. 820 (1961), that compelled membership in an integrated state bar and the payment of compulsory dues as a member of such bar, does not *per se* violate an individual attorney's First Amendment rights.

In *Lathrop*, six members of this Court, relying on *Railway Employees* v. *Hanson*, 351 U.S. 225 (1956), rejected a Wisconsin lawyer's claim that he could not constitutionally be compelled to join and financially support a state bar association

that expressed opinions on, and attempted to influence, legislation:

> "In our view the case presents a claim of impingement upon freedom of association no different from that which we decided in (*Hanson*). We there held that §2, Eleventh of the Railway Labor Act... did not on its face abridge protected rights of association in authorizing union-shop agreements between interstate railroads and unions of their employees conditioning the employees' continued employment on payment of union dues, initiation fees and assessments... In rejecting Hanson's claim of abridgement of his rights of freedom of association, we said, 'on the present record, there is no more an infringement or impairment of First Amendment rights than there would be in the case of a lawyer who by state law is required to be a member of an integrated bar.' 351 U.S., at 238." *Lathrop*, 367 U.S., at 842 (plurality opinion) (footnote omitted).

In *Keller*, this Court held that the petitioners' freedom of association claim based on the State Bar of California's use of its name to advance political and ideological causes or beliefs would not be addressed by this Court in the first instance. 495 U.S. at __, 110 L.Ed.2d at 16. As in this case, the California Court had not addressed the claim. Despite the disparaging and unwarranted remark by the First Circuit panel opinion that "there is an argument to be made that 'the Colegio's penchant for ideological contention is so pervasive and unremitting... that Puerto Rico cannot constitutionally force dissenters to join," *Romany* v. *Colegio de Abogados de Puerto Rico*, 742 F.2d 32, at 40-41 (1st Cir. 1984), the very First Circuit acknowledges that the record in this case leaves that argument unresolved, leaving it unprepared to hold that a rebate and escrow system to protect dissenters is unworkable at the

Colegio. 917 F.2d at 634. In leaving that argument unresolved, the First Circuit also left open any consideration of an argument that the Colegio may be enjoined permanently from using its name to advance political or ideological causes beyond those for which mandatory financing is permissible. 917 F.2d at 634, n.19.

Respondents and cross-petitioners cite no authority to support their proposition to the contrary. Their statement that it is "clearly wrong" is not meaningful. To attempt to resolve this important issue on the basis of the record as it has been developed by the plaintiffs would disserve the development of First Amendment doctrine.

II. Assuming Any Award of Damages Was Warranted in Favor of Plaintiffs in This Case, the Nominal Award of $1.00 Does Not Constitute an Abuse of Discretion on the Part of the District Court, Where Plaintiffs Submitted No Evidence of the Nature and Extent of the Harm They Have Suffered, and Cited No Precedent Imposing on the Court the Obligation to Speculate on the Extent of Their Injury.

The decision below on the award of nominal damages in the amount of $1.00 follows an unbroken line of authority of this Court that in the absence of any proof of damages, a district court acts within its discretion in declining to award more than a nominal sum. *See Memphis Community School Dist.* v. *Stachura*, 477 U.S. 299, 308 n.11 (1986) ("(N)ominal damages, and not damages based on some undefinable 'value' of infringed rights, are the appropriate means of 'vindicating' rights whose deprivation has caused actual, provable injury.") (citing *Carey* v. *Piphus*, 435 U.S. 247 (1978)). *See also id.* at 315-316 (Marshall, J., concurring) (quoting *Hobson* v. *Wilson*, 737 F.2d 1, 62 (D.C. Cir. 1984)) (injury to a First Amendment-protected interest may be compensated with

substantial damages, but "only to the extent that it was 'reasonably quantifiable'").

There was no evidence to allow the District Court to award damages in any amount higher that $1.00 through any method other than speculation, which would constitute a clear abuse of discretion. There was no proof of any damages that may allow this Court to reverse the First Circuit's judgment on that issue.

III. Plaintiffs Lack Taxpayer Standing to Challenge the Commonwealth of Puerto Rico's Internal Revenue Offices to Sell Notarial and Forensic Stamps Issued by the Colegio de Abogados de Puerto Rico, Where They Failed to Show That Such Activity Involves "A Measurable Appropriation" or Loss of Revenue, or "A Direct Dollars-and-Cents Injury" to Themselves.

A party who invokes federal judicial power to challenge the constitutionality of a statute of the Commonwealth of Puerto Rico must be able to show not only that the statute is invalid but that he has sustained or is immediately in danger of sustaining some direct injury as a result of its enforcement, and not merely what he suffers in some indefinite way in common with people generally.

In *Doremus* v. *Board of Education*, 324 U.S. 429 (1952), a taxpayer was held to have no standing to attack the constitutionality of a state statute providing for the reading of Bible verses at the opening of each public-school day, where there was no allegation that such activity was supported by any separate tax or paid for from any particular appropriation or that it added any sum whatever to the cost of conducting the school or increased any tax paid by him. This Court's subsequent decision in *Valley Forge Christian College* v. *Americans United for Separation of Church and State*, 454 U.S. 464 (1982), held that the plaintiffs lacked standing, within the

meaning of Article III, as either taxpayers or citizens to bring suit to challenge the conveyance of a former military hospital to a church-related college after the facility had been declared surplus real property by the Department of Health, Education and Welfare, and then permitted the college to acquire the property without making any financial payment. The Court concluded that the plaintiffs lacked standing, in effect holding that the alleged deprivation of the constitutional use of their tax dollars failed to state a cognizable personal injury different from the harm purportedly sustained by taxpayers generally.

In this case, plaintiffs have made no showing that the activities of the Colegio de Abogados de Puerto Rico that they are challenging involve any measurable appropriation or loss of revenue, or any direct injury to themselves. Therefore, the plaintiffs may not challenge the use of government facilities to sell the Colegio stamps.

Conclusion

As the record has been developed below, compelled membership in the Colegio de Abogados de Puerto Rico does not involve any implication of First Amendment rights of the respondents and cross-petitioners. The courts below did not abuse their discretion in awarding the amount of $1.00 for the damages allegedly suffered by the plaintiffs. Plaintiffs have no standing to challenge the use of government facilities to sell the notarial and forensic stamps issued by the Colegio de Abogados de Puerto Rico.

Respectfully submitted,

CARLOS V. GARCIA GUTIERREZ
LUIS M. VILLARONGA
CARLOS A. RODRIGUEZ VIDAL
HARRY ANDUZE MONTANO
Counsel of Record
117 Eleanor Roosevelt Ave.
Suite 303
Hato Rey, Puerto Rico 00918
(809) 250-7171
Attorneys for Petitioners, Cross-Respondents

May 22, 1991